

BEFORE THE  
**Federal Communications Commission**

In the Matter of )

Amendment of Section 73.202(b) )

Table of Allotments )

FM Broadcast Stations )

(Tilden, Texas) )

MM Docket No. 00-148  
RM-10169

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**MAY 12 2004**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To The Commission

**Opposition to Application of Charles Crawford for Review**

Rawhide Radio, LLC ("Rawhide") , by its counsel, hereby submits its Opposition to the Application of Charles Crawford for Review ("Application for Review") submitted by Charles Crawford ("Crawford") on May 4, 2004, with reference to Report and Order DA 04-914 (Audio Division, rel April 5, 2004) ("Report and Order") in the above-referenced matter. In support of its opposition to the Application for Review, Rawhide states the following

The Audio Division dismissed Crawford's petition for rule making to allot FM Channel 245C3 at Tilden, Texas, on the ground that it conflicted with an element in the Counterproposal which Rawhide (joined by other parties<sup>1</sup>) timely filed in MM Docket No. 00-148 (Quanah, Texas), and it was filed after the publicly-announced comment date in that proceeding. Report and Order, Paragraph 2. In reaching its decision, the Audio Division cited and relied on the decision of the Commission in Benjamin and Mason, Texas, F.C.C. 03-327, 19 F.C.C. Rcd. 470

<sup>1</sup> Rawhide is one of the Joint Parties which filed the Counterproposal referred to in the Report and Order and which is the subject of Crawford's Application for Review. The fact that other parties to the Counterproposal have not joined in this formal Opposition to the Application for Review should not be interpreted as indicating that they agree with position taken by Crawford in his Application for Review.

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(rel. Jan. 8, 2004) ("Benjamin and Mason"), appeal pending, sub nom. Crawford v F C C and United States of America, Case No. 04-1031. Id , footnote 5. In Benjamin and Mason, the Commission affirmed the decision of the Audio Division (18 F.C.C. Rcd. 103 (Media Bur 2003)) and upheld the dismissal of Crawford's petitions to allot FM channels in those communities for precisely the same reason as the Audio Division has now dismissed Crawford's petition to allot FM Channel 245C3 to Tilden, Texas--i.e , the petitions conflicted with an element of the Counterproposal which Rawhide timely filed in MM Docket No. 00-148 (Quanah, Texas), and it was filed after the publicly-announced comment date in that proceeding.

Crawford's Application for Review merely incorporates by reference the arguments which he advanced in his Application for Review in the Benjamin and Mason proceeding. Since the Commission considered and expressly rejected all of Crawford's arguments in its decision in Benjamin and Mason <sup>2</sup>, Rawhide sees no reason to respond to these rejected arguments at this time.<sup>3 4</sup>

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<sup>2</sup> Crawford's position in his Application for Review in the Benjamin and Mason proceeding is encapsulated in this assertion "The Commission's dismissal of the Benjamin and Mason petitions due to conflicts with the counterproposal cannot be sustained under the Administrative Procedure Act and related judicial and agency decisions" (page iv). The Commission, however, determined that that this assertion is not well founded. Id , Paragraph 4 ("We conclude that the dismissal of his petitions due to conflicts with the Quanah NPRM complies with APA requirements"), Id , footnote 6 ("We are not required by the Administrative Procedure Act to issue separate notices for every channel under consideration. The release of the Notice of Proposed Rule Making in MM Docket No. 00-148 placed all parties on constructive notice that a rulemaking proceeding was occurring regarding the communities at issue and that an alternative, potentially preclusive allotment could occur"), and Id , footnote 8 ("Our FM allotment procedure also meets the "logical outgrowth" test applied by the Court of Appeals to determine whether a rulemaking action was based upon adequate notice and opportunity for public participation.")

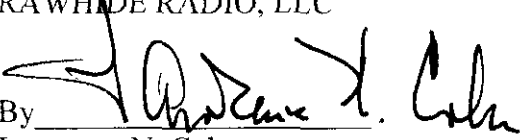
<sup>3</sup> Crawford comments that because of "the staff's reliance on the Commission's decision in Benjamin and Mason, Texas, FCC 03-327 (January 8, 2004), involving similar circumstances, no purpose would be served by lodging a Petition for Reconsideration" (Id , page 1). Rawhide agrees. It observes, however, that insofar as the merits of this proceeding are concerned, Crawford's impeccable reasoning (i.e , "no useful purpose would be served ") is, beyond peradventure, just as applicable to, and fully dispositive of, his Application for Review.

<sup>4</sup> Rawhide does, however, hereby incorporate by reference its views as set forth in its Opposition to Application for Review submitted on February 19, 2003, in the Benjamin and Mason proceeding.

As the arguments advanced in the Application of Charles Crawford for Review have already been considered and rejected by the Commission, the Commission should summarily deny the relief sought therein and terminate this proceeding.

Respectfully submitted

RAWHIDE RADIO, LLC

By 

Lawrence N. Cohn

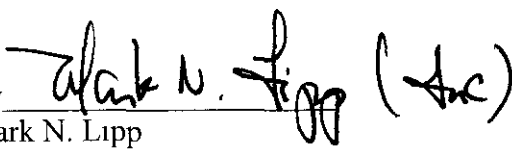
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**Certificate of Service**

I, Brenda Chapman, hereby certify that on this 12<sup>th</sup> day of May, 2004, a copy of the foregoing "Opposition to Application of Charles Crawford for Review" was mailed via first class, U.S. mail, postage prepaid or delivered via hand delivery where indicated to the following

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